IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 14089 of 2007(B)

AGAINST THE ORDER IN IA.351 & 355/2007 IN OS.207/2005 of MUNSIFF COURT,KATTAPPANA

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PETITIONER:

T.T.MANOJ, S/O.DAMODHARAN,
AGED 37 YEARS, THALIYANIYIL HOUSE,
CHAPPATHKARA, 6TH ACRE, AYYAPPANKOVIL VILLAGE,
IDUKKI DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENTS:

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1. BINDHUMOL, D/O.JANARDHANAN,
THEVARKUNNEL HOUSE, PUNJAVAYALKARA,
MUNDAKAYAM VILLAGE, KOTTAYAM DISTRICT.

2. JANARDHANAN, S/O.NARAYANAN,
THEVARKUNNEL HOUSE, PUNJAVAYALKARA,
MUNDAKAYAM VILLAGE, KOTTAYAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE PLAINT IN OS.207/05 BEFORE THE COURT OF MUNSIFF, KATTAPPANA DATED 10.10.2005.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS ON 13.2.2006 IN EXHIBIT P1 SUIT.

EXT.P3: TRUE COPY OF THE APPLICATION FORM FOR LOAN MARKED AS EXHIBIT X1 IN EXHIBIT P1 SUIT.

EXT.P4: TRUE COPY OF THE RECEIPT ISSUED BY THE UNION BANK OF INDIA DATED 30.8.2005 MARKED AS EXHIBIT X2 IN EXHIBIT P1 SUIT.

EXT.P5: TRUE COPY OF THE CHEQUE DATED 3.10.2003 MARKED AS EXHIBIT X3 IN EXHIBIT P1 SUIT.

EXT.P6: TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE PLAINTIFF IN LIEU OF CHIEF EXAMINATION IN EXHIBIT P1 SUIT.

EXT.P7: TRUE COPY OF THE ACCOUNT OPENING FORM OF THE STATE BANK OF TRAVANCORE.

EXT.P8: TRUE COPY OF THE PETITION FILED BY THE PETITIONER TO REOPEN THE EVIDENCE AS I.A.No.351/07 IN OS.207/05 BEFORE THE MUNSIFF COURT, KATTAPPANA DATED 22.3.2007.

EXT.P9: TRUE COPY OF THE PETITION FILED BY THE PETITIONER AS I.A.No.355/07 IN OS.207/05 OF THE MUNSIFF COURT, KATTAPPANA DATED 22.3.2007.

EXT.P10: TRUE COPY OF THE ORDER DATED 24.3.2007 IN I.A.No.351/07 IN OS.207/05 OF MUNSIFF COURT, KATTAPPANA.

EXT.P11: TRUE COPY OF THE ORDER DATED 24.3.2007 IN I.A.No.355/07 IN OS.207/05 OF MUNSIFF COURT, KATTAPPANA.

TRUE COPY

PA TO JUDGE.

M.N.KRISHNAN, J.

W.P.(C). NO. 14089 OF 2007

Dated this the 10th day of December, 2007

J U D G M E N T

This writ petition is filed seeking to set aside the order in IA No.355/07 in OS No.207/05 on the file of the Munsiff court, Kattapana. The suit is for realisation of the amount. It is the case of the plaintiff that the 2nd defendant informed him that there is two acres of land available for purchase and in order to pay the advance amount, plaintiff directed the bank authorities to issue a Demand Draft for Rs.35,000/- which was issued in the name of the 1st defendant Bindhumol K.J. It is the case of the plaintiff that instead of making the payment they utilised the amount for themselves and on his request, paid back some amount and therefore he has instituted the suit for balance consideration. It is contended that Bindhumol K.J. mentioned in the DD is not the 1st defendant and therefore the plaintiff requested the court to summon the account opening forum relating to Bindhumol K.J., which is marked as Ext.P7 in this writ petition. It is submitted that if the original of the document is summoned from the bank and it is proved in accordance with law it

will conclusively prove that the first defendant and Bindhumol K.J. are one and the same person and the contention of the defendant have to be negatived. Since the defendant have disputed the identity and such a dispute have arisen only during the course of examination, one cannot blame the plaintiff for not taking steps at the earlier stage However, the amount sought to be summoned is absolutely necessary for resolving the controversy between the parties one way or the other. The earlier I.A. No. 351/07 was not dismissed on merit and so it cannot operate as a bar in filing application I.A. No. 355/07.

Therefore, I set aside the order of the court below and allow the application and direct the court below to summon the original of Ext.P7 document and, if necessary, to examine witnesses to prove the same. Needless to say if on account of this evidence further evidence is to be adduced by the defendants, that also may be permitted.

The writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

vps